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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSE TRUJILLO,

Plaintiff,

vs.

TULARE VILLAGE, LLC; PHILLIP A.
MEHAN, individually and as Trustee of the
COMMUNITY TRUST CREATED UNDER
THE PHILIP A. MEHAN AND IRIS M.
MEHAN INTER VIVOS TRUST
AGREEMENT dated September 9, 1985; IRIS
M. MEHAN, individually and as Trustee of
the COMMUNITY TRUST CREATED
UNDER THE PHILIP A. MEHAN AND IRIS
M. MEHAN INTER VIVOS TRUST
AGREEMENT dated September 9, 1985;
TONG KAI INC. dba GRAND STAR
BUFFET; FULGENCIO RAMIREZ
CHILITOS MEXICAN RESTAURANT, INC.
dba CHILITO'S;

Defendants.

) No.
)
) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER THE**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff JOSE TRUJILLO ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

(a) Grand Star Buffet
1167 North Cherry Street
Tulare, California 93274
(hereafter “the Grand Star Facility”)

(b) Chilito’s
727 East Prosperity Avenue
Tulare, California 93274
(hereafter “the Chilito’s Facility”)

Each of the facilities identified above shall be collectively hereafter referred to as “the Facilities.”

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes, against:

a) TULARE VILLAGE, LLC; PHILLIP A. MEHAN, individually and as Trustee of the COMMUNITY TRUST CREATED UNDER THE PHILIP A. MEHAN AND IRIS M. MEHAN INTER VIVOS TRUST AGREEMENT dated September 9, 1985; and IRIS M. MEHAN, individually and as Trustee of the COMMUNITY TRUST CREATED UNDER THE PHILIP A. MEHAN AND IRIS M. MEHAN INTER VIVOS TRUST AGREEMENT dated September 9, 1985 (hereinafter collectively “the Landlord Defendants”);

b) TONG KAI INC. dba GRAND STAR BUFFET (hereinafter “the Grand Star Defendant”); and

c) FULGENCIO RAMIREZ CHILITOS MEXICAN RESTAURANT, INC. dba CHILITO’S; (hereinafter “the Chilito’s Defendant”).

The Grand Star Defendant and the Chilito’s Defendant are collectively referred to herein as “the Tenant Defendants,” and together with the Landlord Defendants, collectively the “Defendants.”

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

1 10. Plaintiff lives less than fifteen miles from the Facilities and visited the Facilities
2 on or about August 15, 2021 to have dinner at the Chilito's Facility, and August 21, 2021 to
3 have dinner at the Grand Star Facility. During his visits to the Facilities, Plaintiff personally
4 encountered barriers (both physical and intangible) that interfered with, if not outright denied,
5 Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered
6 at the Facilities. These barriers include, but are not necessarily limited to, the following:

- 7 a) During both of Plaintiff's visits to the Facilities, he had difficulty
8 locating designated accessible parking due to the lack of proper signage
9 at the designated accessible parking stalls in the parking lot serving the
10 Facilities.
- 11 b) During Plaintiff's August 15, 2021 visit to the Chilito's Facility, he
12 parked in a designated accessible parking stall near the Chilito's
13 Facility. He could not find a van-accessible parking stall in that area.
14 The access aisle next to his parking stall was too narrow, so Plaintiff had
15 to park partially obstructing the adjacent parking stall. There was still
16 not enough clear space for him to fully open his vehicle door, so
17 Plaintiff needed help from his daughter to transfer to his wheelchair.
- 18 c) During Plaintiff's August 15, 2021 visit to the Chilito's Facility, the
19 entry walkway leading to the Chilito's Facility was excessively sloped
20 and uneven, causing Plaintiff to require assistance from his daughter to
21 push his wheelchair.
- 22 d) During Plaintiff's August 15, 2021 visit to the Chilito's Facility, the
23 entrance door was heavy and difficult for Plaintiff to open.
- 24 e) During Plaintiff's August 15, 2021 visit to the Chilito's Facility, the
25 table at which Plaintiff and his family were seated was too low and did
26 not have sufficient knee and toe clearances to accommodate Plaintiff's
27 wheelchair, so he had to sit far away from the table and extend himself
28 uncomfortably to be able to reach his plate.

- 1 f) On August 15, 2021, it was difficult for Plaintiff to make his way to and
2 from his table at the Chilito's Facility because the path of travel through
3 the dining area lacked sufficient clear width. Patrons sitting at the tables
4 and infants in high chairs made the aisle too narrow for Plaintiff's
5 wheelchair to fit through. Plaintiff had to ask the other customers to
6 move to allow him to pass. This was embarrassing, especially as he
7 could overhear some diners complaining to each other about having to
8 move. He needed to use the restroom while dining, but decided not to
9 because he did not want to go through the humiliating experience of
10 having to ask other diners to move for him again.
- 11 g) On August 15, 2021, Plaintiff could also see that there were double
12 swinging doors along the route of travel to the restroom at the Chilito's
13 Facility which he would not be able to maneuver his wheelchair through
14 easily, if at all. This contributed to his decision not to use the restroom.
- 15 h) On August 15, 2021, Plaintiff could see that the transaction counter at
16 the Chilito's Facility was too high for him to use. He had to pay at the
17 table instead.
- 18 i) On August 21, 2021, Plaintiff parked in a designated accessible parking
19 stall near the Grand Star Facility. Plaintiff could not locate an accessible
20 route to the Grand Star Facility from his parking stall, as there was no
21 curb ramp nearby. Plaintiff had to travel through the vehicular drive in
22 search of a ramp so that he could wheel onto the entry walkway.
23 Additionally, Plaintiff encountered a large vertical height change at the
24 transition from the parking lot to the curb ramp that was difficult to
25 wheel over.
- 26 j) On August 21, 2021, Plaintiff had difficulty entering the Grand Star
27 Facility, as the entrance door required excessive force to open and the
28 threshold was raised, causing his wheelchair to get stuck.

1 k) On August 21, 2021, Plaintiff was seated by staff at the Grand Star
2 Facility. The table at which he was seated was too low and did not have
3 sufficient knee and toe clearances to accommodate Plaintiff's
4 wheelchair, so he had to sit far away from the table and at an
5 uncomfortable angle, which made it hard to reach his food.

6 l) On August 21, 2021, it was difficult for Plaintiff to pay for his meal at
7 the Grand Star Facility because the transaction counter was too high for
8 him to reach and see the payment device. Additionally, the counter was
9 obstructed with merchandise and other items, which were difficult for
10 Plaintiff to reach over.

11 11. There may exist other barriers at the Facilities which relate to Plaintiff's
12 disabilities, and he will seek to amend this Complaint once such additional barriers are
13 identified as it is Plaintiff's intention to have all barriers which exist at the Facilities and relate
14 to his disabilities removed to afford him full and equal access.

15 12. Plaintiff was, and continues to be, deterred from visiting the Facilities because
16 Plaintiff knows that the Facilities' goods, services, facilities, privileges, advantages, and
17 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
18 Plaintiff enjoys the goods and services offered at the Facilities, and will return to the Facilities
19 once the barriers are removed.

20 13. Defendants knew, or should have known, that these elements and areas of the
21 Facilities were inaccessible, violate state and federal law, and interfere with (or deny) access to
22 the physically disabled. Moreover, Defendants have the financial resources to remove these
23 barriers from the Facilities (without much difficulty or expense), and make the Facilities
24 accessible to the physically disabled. To date, however, Defendants refuse to either remove
25 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

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14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Facilities to remove impediments to wheelchair access and to comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for Accessible Design. Defendants have not removed such impediments and have not modified the Facilities to conform to accessibility standards. Defendants have intentionally maintained the Facilities in their current condition and have intentionally refrained from altering the Facilities so that they comply with the accessibility standards.

15. Plaintiff further alleges that the (continued) presence of barriers at the Facilities is so obvious as to establish Defendants' discriminatory intent. On information and belief, Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Facilities; conscientious decision to maintain the architectural layout (as it currently exists) at the Facilities; decision not to remove barriers from the Facilities; and allowance that Defendants' property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facilities are not in the midst of a remodel, and that the barriers present at the Facilities are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

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1 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
2 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
3 Facilities during each visit and each incident of deterrence.

4 Failure to Remove Architectural Barriers in an Existing Facility

5 19. The ADA specifically prohibits failing to remove architectural barriers, which
6 are structural in nature, in existing facilities where such removal is readily achievable. 42
7 U.S.C. § 12182(b)(2)(A)(iv).

8 20. When an entity can demonstrate that removal of a barrier is not readily
9 achievable, a failure to make goods, services, facilities, or accommodations available through
10 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
11 § 12182(b)(2)(A)(v).

12 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
13 barriers at the Facilities without much difficulty or expense, that the cost of removing the
14 architectural barriers does not exceed the benefits under the particular circumstances, and that
15 Defendants violated the ADA by failing to remove those barriers, when it was readily
16 achievable to do so.

17 22. In the alternative, if it was not “readily achievable” for Defendants to remove
18 the Facilities’ barriers, then Defendants violated the ADA by failing to make the required
19 services available through alternative methods, which are readily achievable.

20 Failure to Design and Construct an Accessible Facility

21 23. Plaintiff alleges on information and belief that the Facilities were designed and
22 constructed (or both) after January 26, 1993 – independently triggering access requirements
23 under Title III of the ADA.

24 24. The ADA also prohibits designing and constructing facilities for first occupancy
25 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
26 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

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28 //

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facilities in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facilities were modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facilities in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facilities, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facilities that are required to be readily accessible to and usable by persons with disabilities.

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

32. Such failure by Defendants to maintain the Facilities in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

VII. SECOND CLAIM

Unruh Act

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

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VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facilities are public accommodations constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facilities were not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facilities aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 Dated: 07/01/2022

MOORE LAW FIRM, P.C.

2 /s/ Tanya E. Moore

3 Tanya E. Moore

4 Attorney for Plaintiff

5 Jose Trujillo

VERIFICATION

I, JOSE TRUJILLO, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 07/01/2022

/s/ Jose Trujillo
Jose Trujillo

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore
Attorney for Plaintiff,
Jose Trujillo